



# Introduction to the MSA



**Council Member  
Orientation**

**10/23-10/25**

**Washington, D.C**

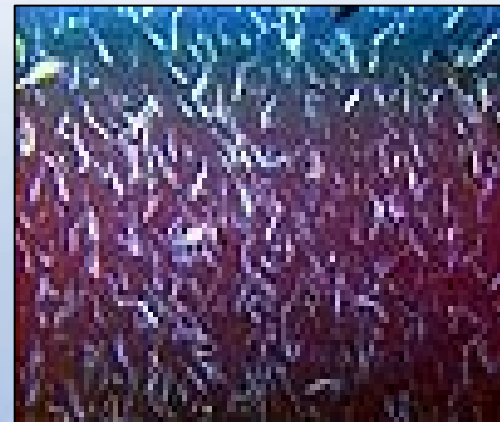
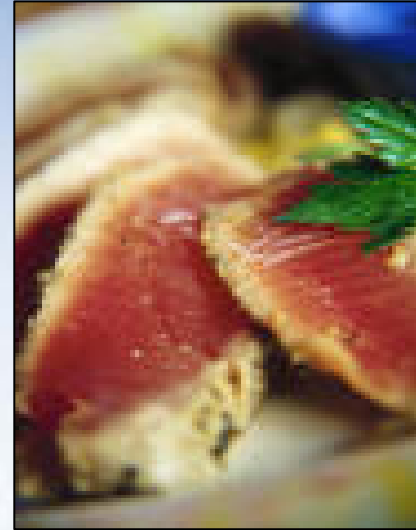


# Agenda

- ◆ **The Fishery Management Mission**
- ◆ **Background and History**
- ◆ **Structure of the MSA**
  - ◆ Councils
  - ◆ FMPs
  - ◆ Special Provisions



# The Fishery Management Mission





# The Fishery Management Mission

*“The Congress finds and declares [that]..... A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.”*



# Background and History

- **Pre-1976**

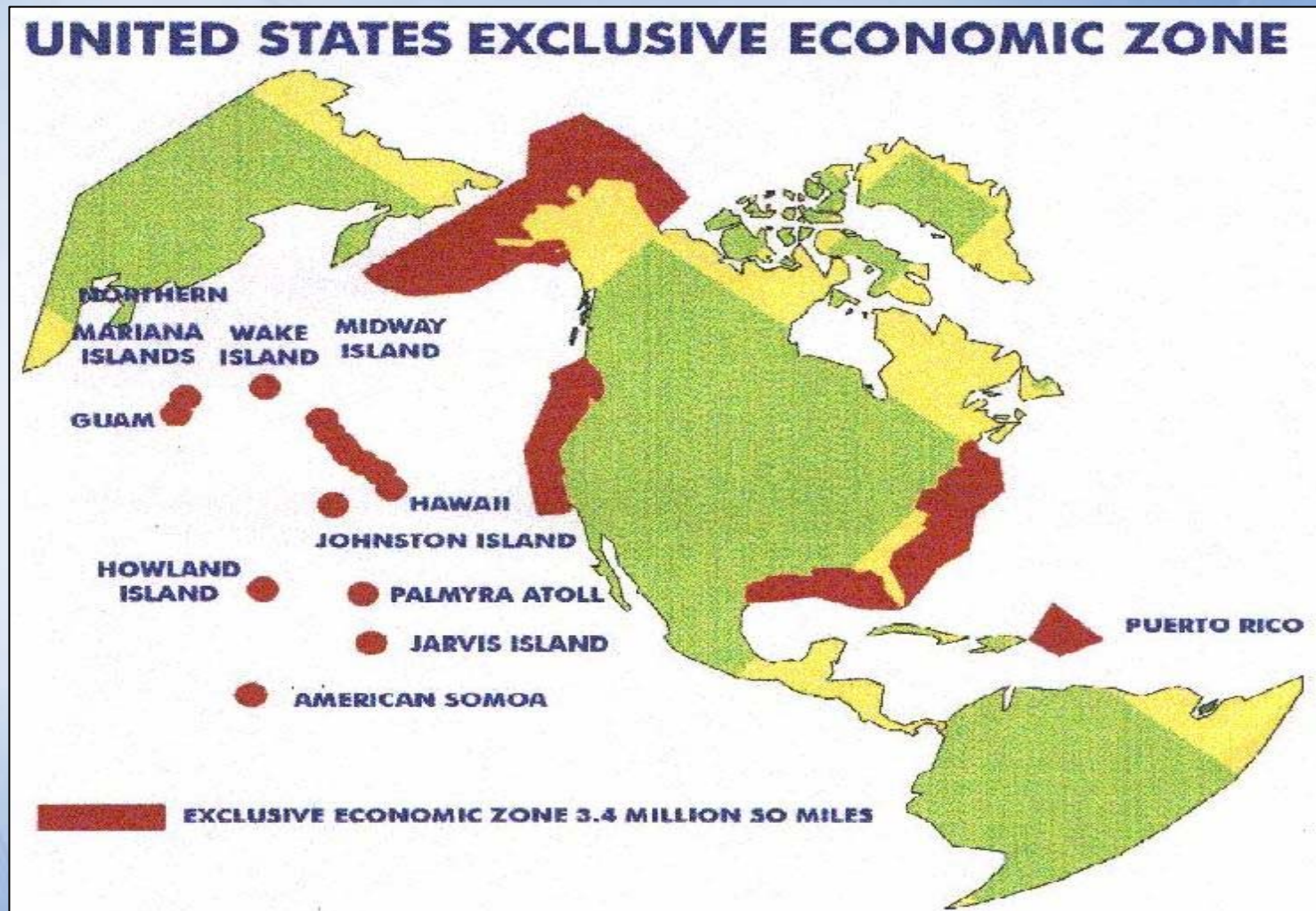
- State management within territorial waters

- Foreign fishing in what is now EEZ



# 1976: FCMA

- Established FCZ/EEZ
- Set management structure



# 1996: Sustainable Fisheries Act

- Same Management Structure
- Increased focus on Sustainability
- New Name (MSA)



# 2006: MSRA

- End & prevent **overfishing**
- Strengthen **role of science in management**
- Promote **market-based management** strategies
- Improve **science & data**
- Streamline **environmental review**
- Enhance **international cooperation**



# 2006: MSRA

- Increased Accountability: ACLs and AMs
- Strengthens role of science
- Emphasis on Market-Based Management: LAPPS
- Council Member Training
- Coordination with NEPA
- International Cooperation





# Structure of the MSA

- Councils
- Fishery Management Plans (FMPs)
  - Achieve OY/Prevent Overfishing
  - Additional National Standards
  - FMP Components (Mandatory and discretionary)
  - Other Applicable Law
  - Secretarial Review
- Special Provisions



# 8 Regional Councils

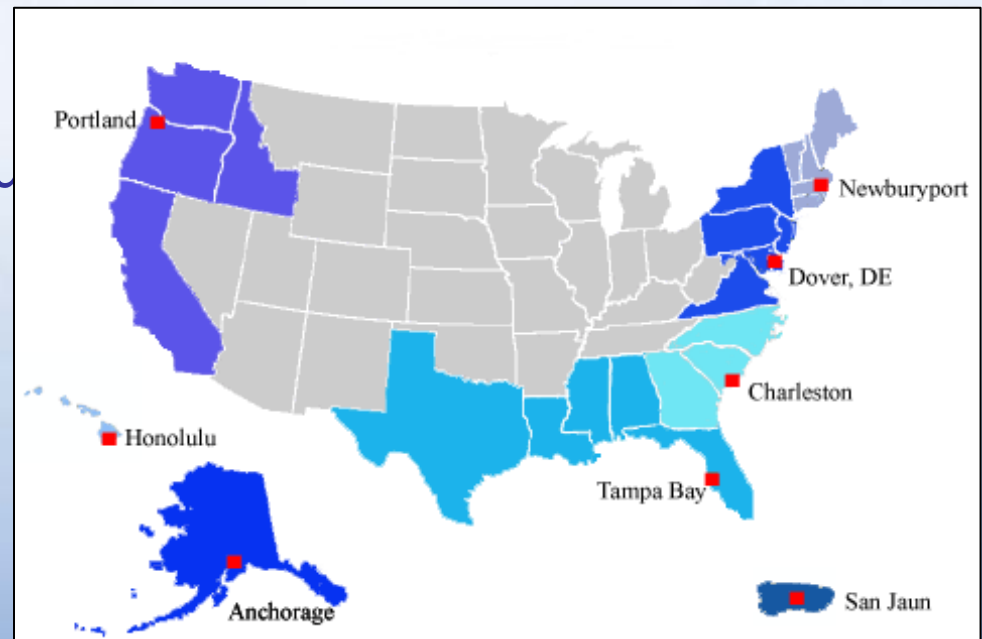
**Governors  
Nominate/Secretary  
appoints**

## Special Representation

E.g., North Carolina on  
Mid-Atlantic; Tribal seat  
on Pacific

## Qualifications

- Knowledgeable about fisheries
- Fair and balanced apportionment





# Council Functions

- Prepare and submit FMPs/amendments
- Convene Committees and panels
  - SSC; Fishing Industry Advisory Committee; Other advisory panels
- Conduct Public Meetings
- Submit Periodic Reports
- Set ACLs based on science
- Develop, with SSC, research priorities





# Agenda

- ◆ **The Fishery Management Mission**
- ◆ **Background and History**
- ◆ **Structure of the MSA**
  - ◆ Councils
  - ◆ *FMPs*
  - ◆ Special Provisions
- ◆ **Parties and Roles**



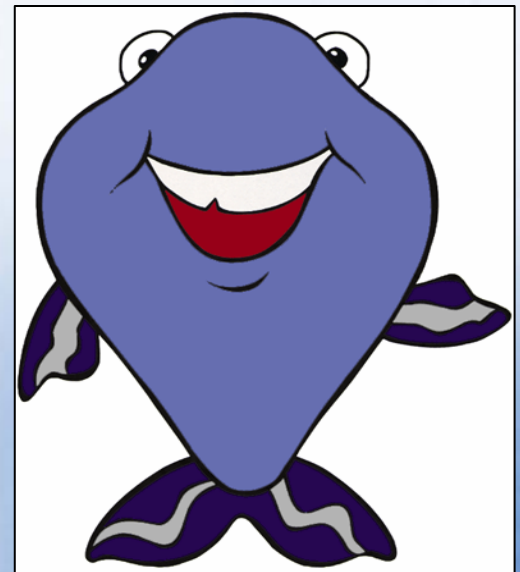
# Fishery Management Plans

National Standards

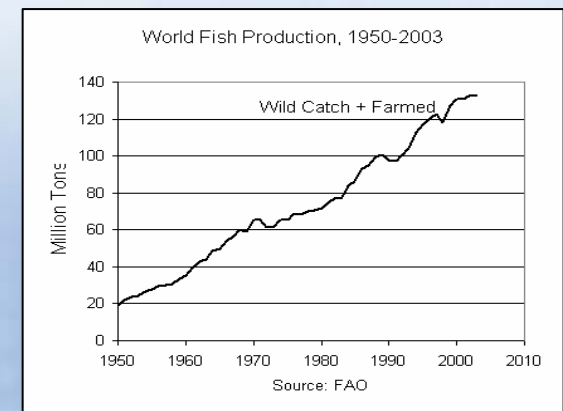
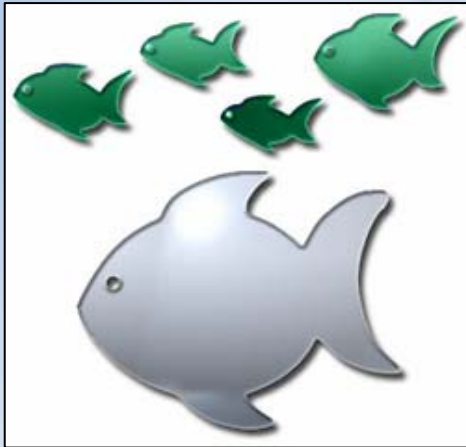
FMP Components (Mandatory and discretionary)

Other Applicable Law

Secretarial Review



# The National Standards: Ten Policy Objectives



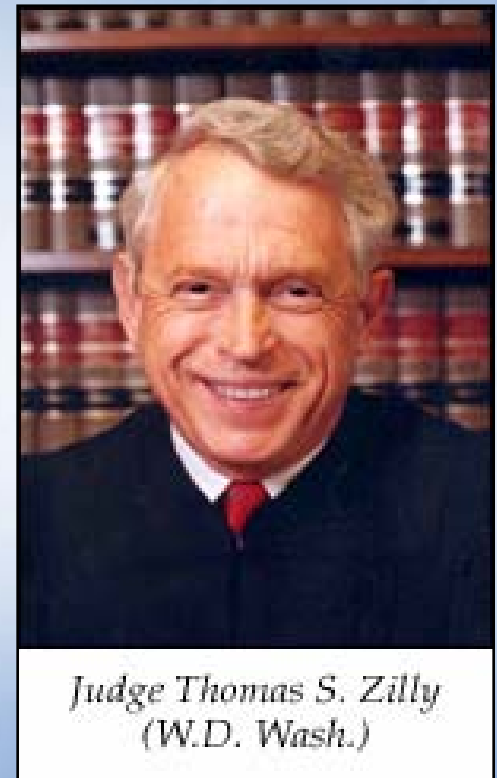
# What do they Say?

- (1) Achieve OY and prevent overfishing**
- (2) Best available scientific information**
- (3) Manage stocks as a unit**
- (4) Allocations fair and equitable, promote conservation, and prevent excessive shares**
- (5) Consider efficiency in utilization; not have economic allocation as sole purpose**
- (6) Allow for variations and contingencies**
- (7) Minimize costs, avoid duplication**
- (8) Consider fishing communities to provide for their sustained participation and to minimize adverse economic impacts**
- (9) Minimize bycatch, and bycatch mortality**
- (10) Promote safety of human life at sea**

# What do they mean?

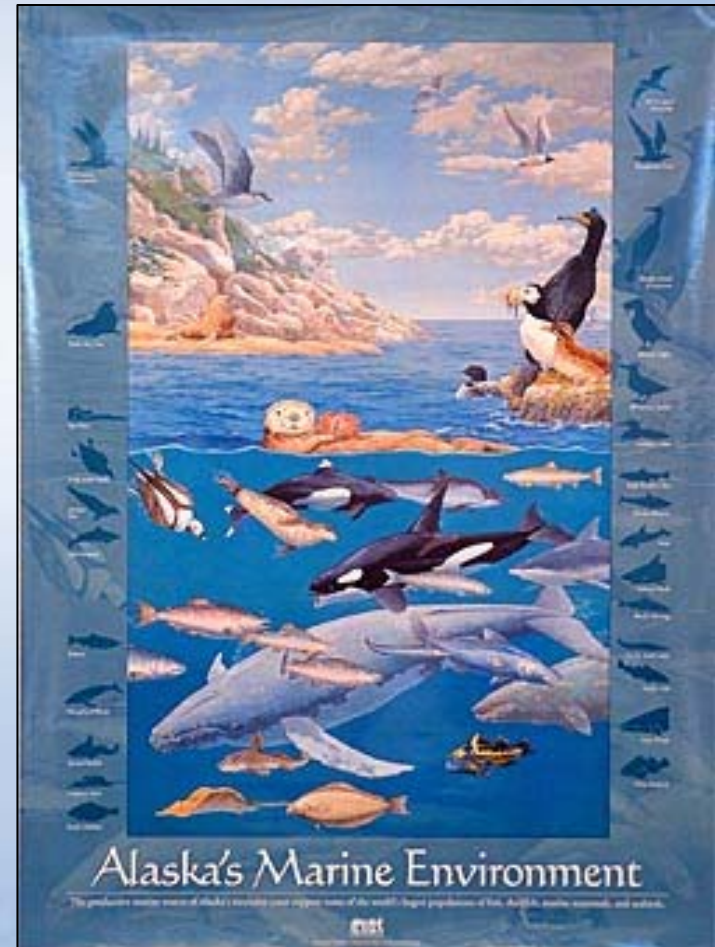


- **National Standard Guidelines (50 CFR 600)**
- **Lessons from Case Law**





# OY means: Food, Recreation, and Ecosystems





# Achieve OY/Prevent Overfishing

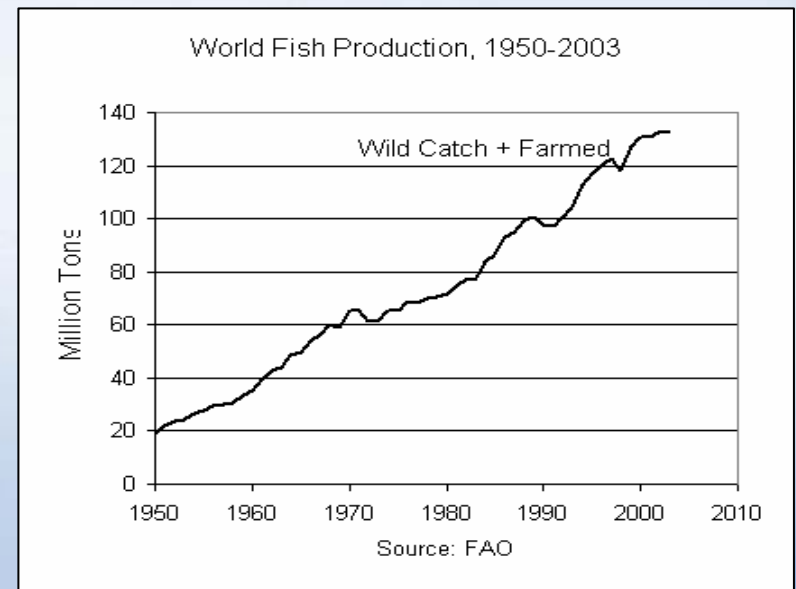
- **OY = greatest overall benefit to the Nation**
  - With respect to: Food, recreation, marine ecosystems
  - Based on MSY, as reduced by:
    - Social, economic, or ecological factors
  - Consistent with Rebuilding
- **MSY**
  - Largest long-term average yield
  - Under prevailing ecological conditions
- **Overfishing**
  - Rate of fishing mortality
  - Jeopardizes long-term ability to produce MSY

# **N.S. Guidelines: The Precautionary Approach**

- Set targets safely below limits
- More conservative management for stocks below the level that could produce MSY
- Greater uncertainty should lead to greater caution in setting catch levels

## N.S. 2: Best Available Scientific Information

- “Best Available” may be incomplete or allow conflicting interpretations
- Councils should justify choices
- What to do with new data
- SAFE Report





# Case Law: National Standard 2



It is OK to rely on limited data.

**X**

Using data that we have stated is unreliable without explaining why we're using it is NOT OK.

**X**

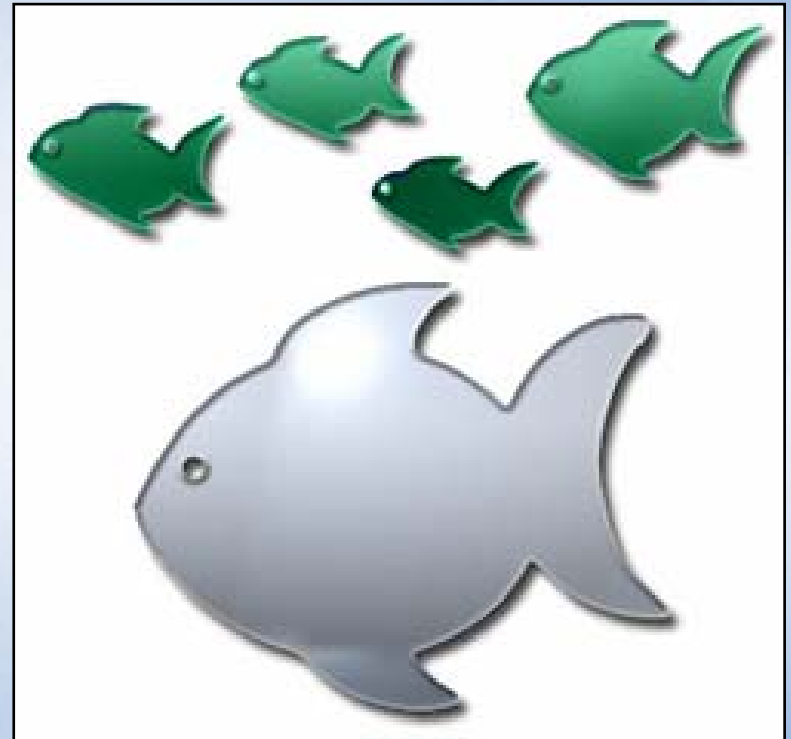
Decisions based on politics instead of science are NOT OK.



# N.S. 3: Manage Stocks as a Unit

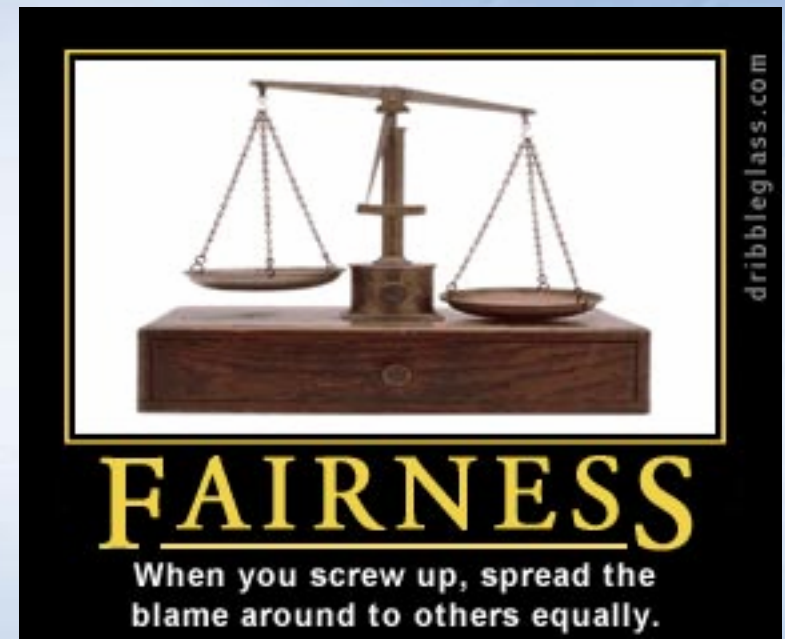
Discretion in defining management unit

- Depends on objectives
- May be based on biological, geographic, economic, technical, social, or ecological issues



# N.S. 4: No Discrimination; Rules for Allocations

- No discrimination between residents of different states.
- If necessary to allocate, allocation must be:
  - (1) Fair and equitable
  - (2) Reasonably calculated to promote conservation.
  - (3) No excessive shares of privileges.





# N.S. 4: Allocations

“Allocation” means –

- Direct, deliberate distribution of opportunity to participate among identifiable, discrete user groups or individuals.
- Incidental allocative effects not included

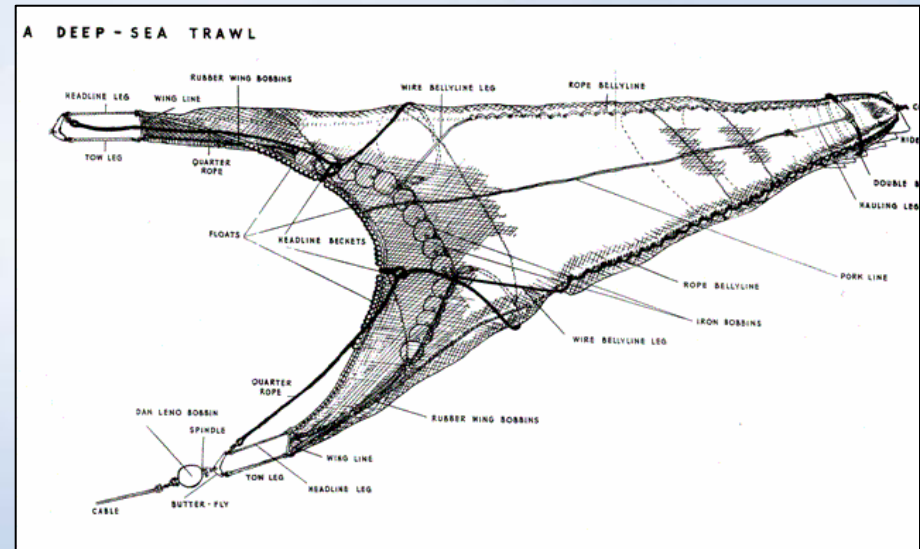


# Case Law: National Standard 4

- **Incidental allocative effects are OK.**
- **Allocations are OK if necessary to achieve conservation benefits.**

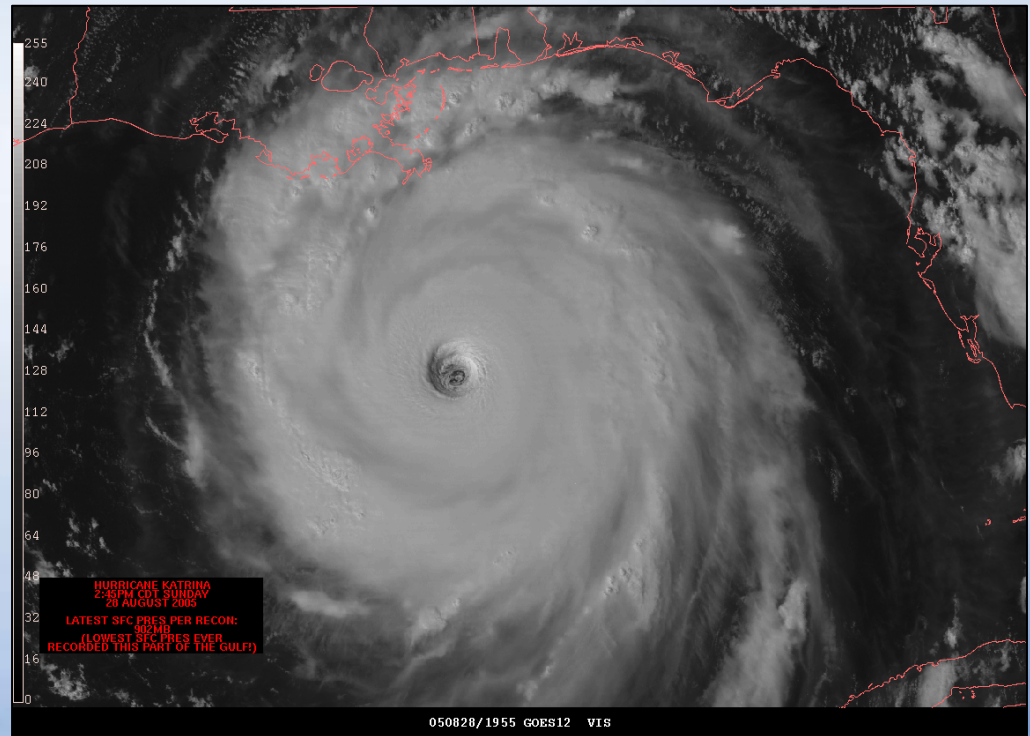
# N.S. 5: Efficiency in Utilization

- Consider efficiency in the utilization of fishery resources;
- Except economic allocation may not be the sole purpose.



# N.S. 6: Variations and Contingencies

- Buffers for variations and uncertainties
- Flexibility for unpredictable events



# N.S. 7: Minimize Costs, Avoid Duplication

- Not every fishery needs an FMP
- Consider costs: fuel costs, enforcement costs, burdens of collecting data
- Analysis to show benefits justify costs



# N.S. 8: Communities

Consistent with conservation requirements, take into account the importance of fishery resources to fishing communities in order to:

- (1) Provide for their sustained participation; and
- (2) To the extent practicable, minimize adverse economic impacts.



# **“Fishing Community” means:**

- **Substantially dependent on the fishery, or**
- **Substantially engaged in harvesting or processing to meet social and economic needs**
- **Geographically based**

# **“Sustained Participation” means:**

**....continued access to the  
fishery within the constraints of  
the condition of the resource.**



# Case Law: National Standard 8

*The conservation requirements of NS 1 trump duty to minimize economic impacts.*



# N.S. 9: Bycatch

To the extent practicable:

(1) Minimize bycatch; and

(2) To the extent bycatch cannot be avoided, minimize the mortality of such bycatch.



# “Bycatch” means:

- “Fish” that are harvested but not sold or kept
- Does not include birds or mammals
- Includes economic and regulatory discards and unobserved mortalities
- Does not include legally retained non-target species



# N.S. 10: Safety

- To the extent practicable, promote the safety of human life at sea.
- Avoid constraints that pressure fishermen to fish in unsafe conditions

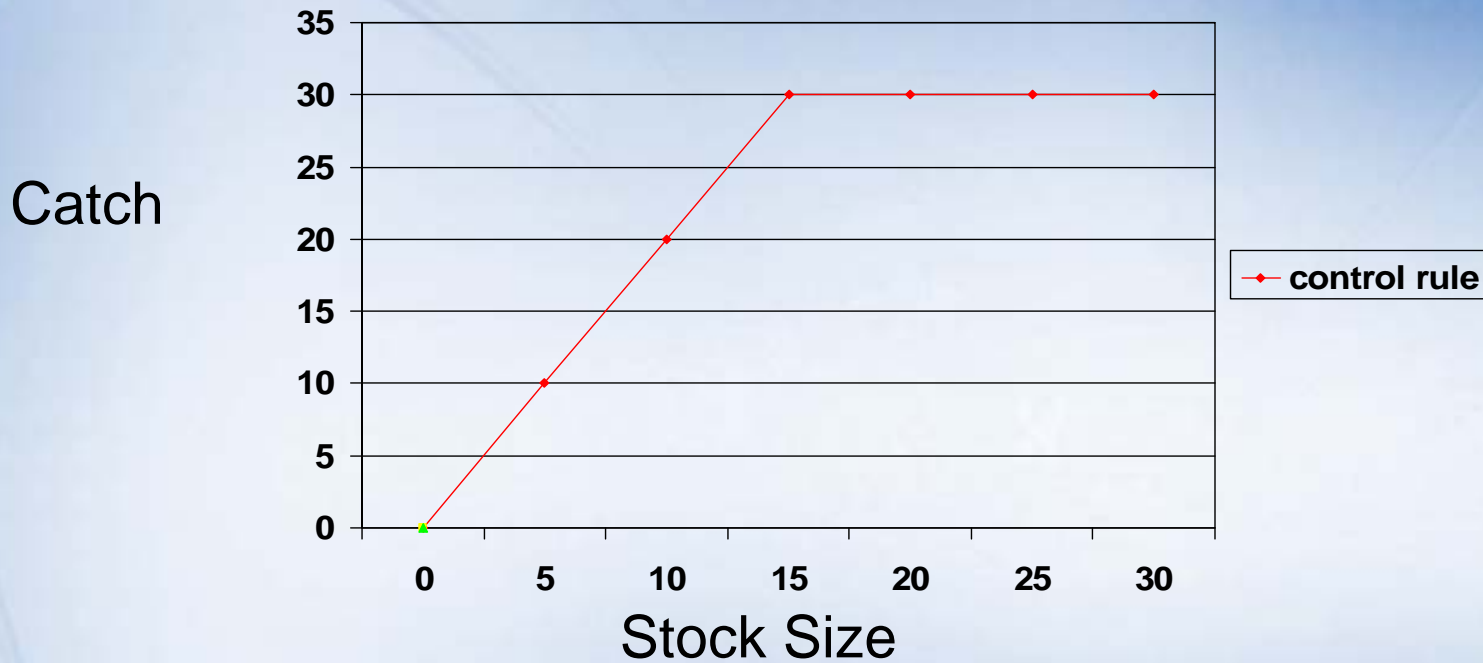


# Required FMP Components

- (1) Prevent overfishing; rebuild; protect, restore, promote long-term health and stability
- (2) Description of the fishery
- (3) Specify MSY and OY
- (4) Specify capacity and domestic harvest and processing of OY
- (5) Specify the data to be submitted
- (6) Temporary adjustments to address unsafe ocean conditions
- (7) Essential fish habitat: identify, minimize impacts from fishing.
- (8) Specify the scientific data needed to implement the plan
- (9) Fishery impact statement
- (10) Overfishing definitions
- (11) Bycatch: reporting methodology and measures to minimize
- (12) Number, types, and mortality of fish caught and released recreationally; minimize mortality and ensure the extended survival
- (13 )Describe sectors (commercial, recreational, and charter); quantify landings trends by sector
- (14) Allocate restrictions and benefits fairly and equitably among sectors.
- (15) Establish a mechanism for setting ACLs and AMs



# Overfishing Definitions



- Tied to overall approach for ending overfishing
- FMPs must specify objective and measurable criteria



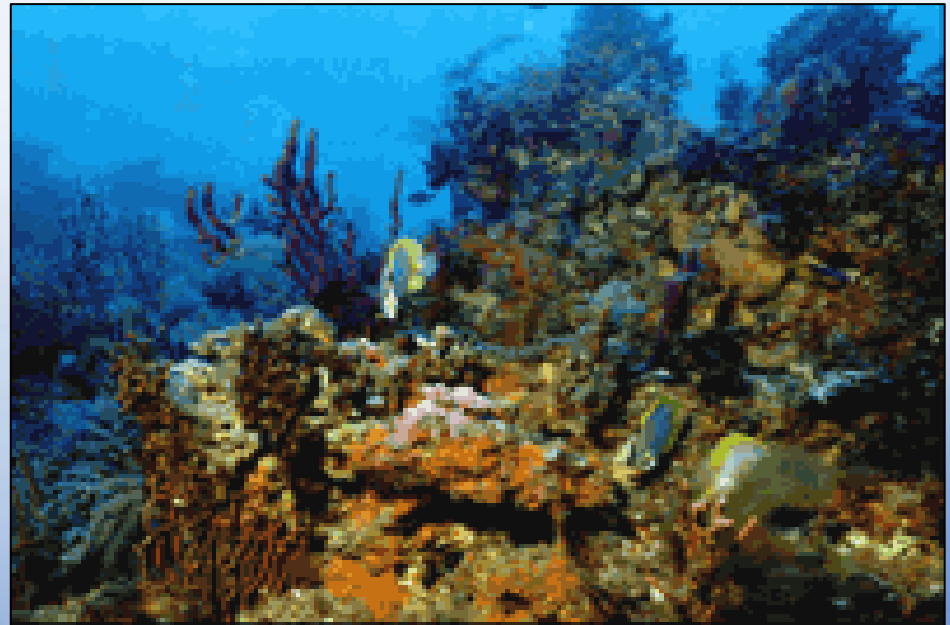
# Essential Fish Habitat (EFH)

## FMP's Must

- Identify and Describe
- Minimize adverse effects from fishing

## EFH Consultations

(Action Agencies Must...)





# Bycatch



- **Standardized reporting methodology to assess (SBRM)**
- **Minimize bycatch**
- **Minimize mortality of unavoidable bycatch**

# Oceana Case

The mandatory components  
must be **EXPLICITLY** written  
into the FMP.

# **Discretionary FMP Components**

- (1) Require permits and fees**
- (2) Designate zones and times where fishing restrictions apply (area-based)**
- (3) Establish restrictions on catch, sale, and transshipment,**
- (4) Include gear requirements**
- (5) Incorporate State measures**
- (6) Establish a limited access system**
- (7) Require processors to submit data**
- (8) Require observer coverage**
- (9) Assess and specify the effect of the FMP on anadromous fish**
- (10) Include harvest incentives for reduced bycatch**
- (11) Reserve a portion of the allowable biological catch for use in research**
- (12) Conserve target and non-target species and habitat**
- (14) Prescribe other measures, requirements, or conditions and restrictions necessary and appropriate for the conservation and management of the fishery**

# 303(b)(2): Area-based Management

- MSRA requires that area closures must:
  - Be based on science
  - Include criteria to assess benefit
  - Include timetable for review
  - Be based benefit/impact analysis
- MSRA allows closures to protect corals



# Limited Access Programs



Must address:

- present participation,
- historical practices and dependence,
- economics
- ability of vessels to switch fisheries,
- cultural and social framework, and
- other relevant considerations.

# **New section 303A: LAPPs**

MSRA allows Councils to recommend "Limited Access Privilege Programs" in fisheries managed under limited access.



# Other Applicable Law

- **RFA:** IRFA/FRFA, Publication of Summary
- **ESA:** Biological Opinion
- **PRA:** OMB Clearance, Notice and Comment
- **CZMA:** Letters to States, State Concurrence
- **DQA:** Pre-dissemination Review Form
- **APA:** Notice and Comment, 30 Day Delay
- **NEPA:** EIS or EA/FONSI
- **EOs 12866, 13272:** Economic Impact Analysis
- **EO 13132:** Consult with States



# Secretarial Review of FMPs

- **Strict Timelines**
  - 95 days for FMPs/amendments
- **Limited Scope**
  - 3 possible outcomes
    - Approve
    - Disapprove
    - Partially approve
- **Criteria for Approvability**
  - National Standards
  - FMP Components
  - Other applicable law
  - Disapproval must be based on inconsistency with law





# Agenda

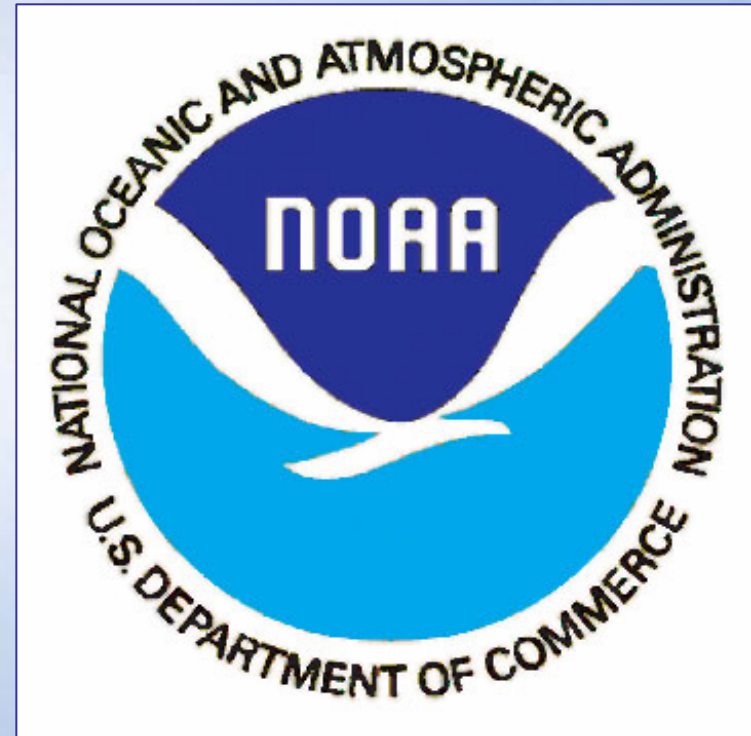
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  - ◆ FMPs
  - ◆ *Special Provisions*
- ◆ Parties and Roles

# Special Provisions of the MSA

- Secretarial FMPs/amendments
- Ending Overfishing
- Highly Migratory Species (HMS)
- Essential Fish Habitat
- Emergency Actions
- Other

# Secretarial FMPs/amendments

- The Secretary may prepare an FMP if:
  - A fishery requires management and a Council fails to act
  - The Secretary disapproves a Council submission and Council fails to submit revision
  - Special Secretarial authority (e.g., HMS, overfishing)





# Ending Overfishing

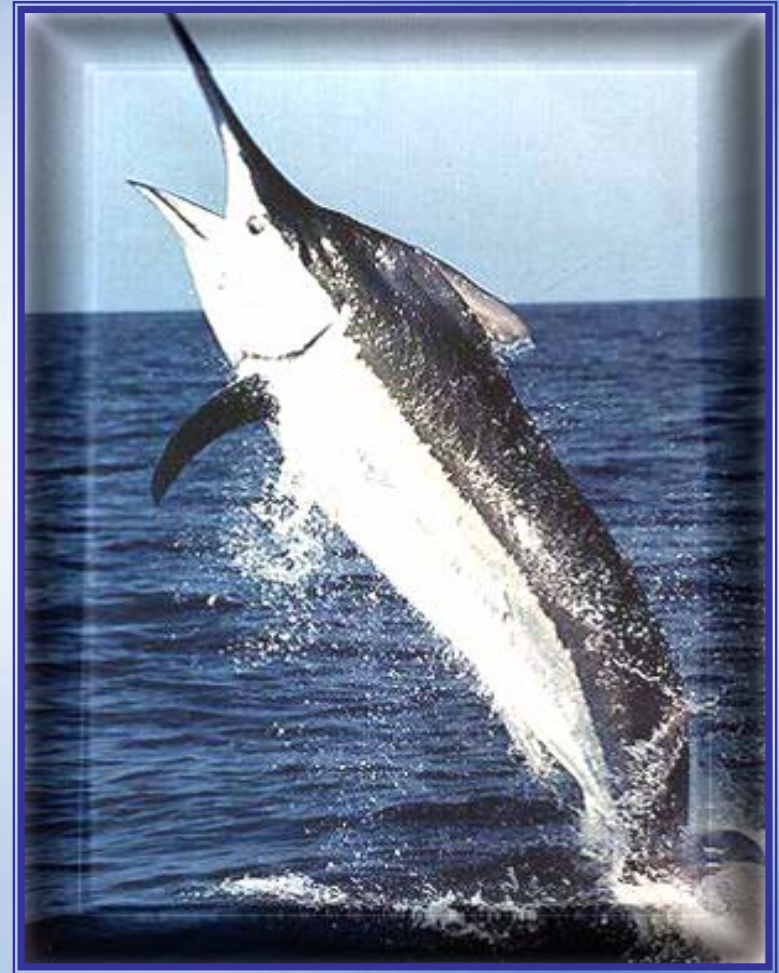
- **Annual Status Report**
- **Detailed timelines**
- **If Council fails to implement within 2 years, Secretary must**
- **Specifies criteria for Rebuilding plans**
  - End overfishing immediately
  - Rebuild in as short a time as possible
  - Not exceed 10 years





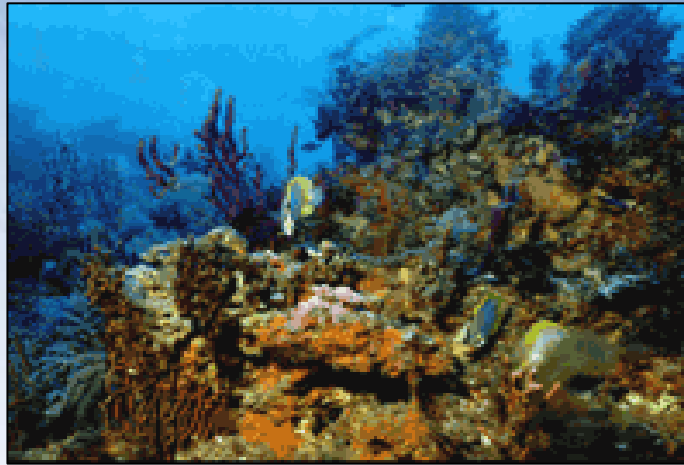
# Highly Migratory Species (HMS)

- Centralized management for Atlantic HMS
  - Tuna, marlin, oceanic sharks, sailfishes, and swordfish
- Primary responsibility rests with Secretary
- Consult with Councils
- Utilize Advisory Committees





# Essential Fish Habitat



## Council Comments

- May comment on agency actions that may affect habitat
- Must make recommendations on actions likely to substantially affect habitat of anadromous fish

## Consultations:

- Action agencies must consult

## CRs/Response:

- NMFS makes conservation recommendation for actions that would adversely affect EFH.
- Action agency must respond within 30 days

# Emergency Actions

- **Is it an Emergency?**
  - Unforeseen circumstances
  - Serious problems in fishery
  - Benefits outweigh normal public process
- **Is Emergency Procedure justified?**
  - Substantial damage and loss
  - For specific reasons:
    - Ecological
    - Economic
    - Social



# **Recap: the MSA**

- ◆ **Our Mission/Competing Objectives**
- ◆ **Evolution towards more holistic approach**
- ◆ **Basic Structure and Goals**
  - ◆ **Councils**
  - ◆ **FMPs: OY, National Standards, FMP Components, other applicable law, Secretarial review**
  - ◆ **Special Provisions**